IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1066 OF 2004

Prabhakar Mahadev Dhane ...Appellant
Vs.
Parshuram Pandurang Jadhav ...Respondent

Mr.D.M.Gupte for the Appellant.
Sachindra Shetye for the Respondent

CORAM: A.S.OKA,J.
DATE : FEBRUARY 16, 2005.

P.C.:

1. Heard Counsel appearing for the parties. The Appeal is by the original Defendant-tenant. Admittedly, the tenancy of the Appellant is not protected by the Rent Control Legislation. The Respondent-Plaintiff served notice under Section 106 of the Transfer of Property Act,1882 and terminated the tenancy of the Appellant. The Trial Court passed a decree for possession which is confirmed by the Appellate Court.

2. Shri Gupte appearing for the Appellant submitted that the rent receipts produced on record show that the tenancy is a yearly tenancy and therefore 15 days' notice issued by the Respondent is contrary to the Section 106 of the said Act of 1882. He submitted that the purpose of letting was manufacturing and therefore the suit notice is not legal.

3. The Appellate Court has recorded a finding that it was the plea of the Appellant that he is monthly tenant. The only contention seems to be that the monthly tenancy is in accordance with Marathi Calender and not in accordance with Gregorian calendar. If the Appellant comes to the Court with plea of monthly tenancy, the contention raised by Shri Gupte

cannot be entertained and that is the reason why the Courts below have passed a decree for possession.

4. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

5. At this Stage Shri Gupte for the Appellant prays that longer time to vacate may be granted as the Appellant is in possession of the suit premises for considerably long time and his livelihood depends on the suit premises. Shri Shetye for the Respondent submitted that considering the old age of the Respondent, very short time to vacate should be granted.

6. Considering the fact that the Appellant is not protected by the Rent Control legislation and that he is carrying on business and earning livelihood by occupying the suit premises, time to vacate deserves to be granted till 28th February 2006 subject to the Appellant giving usual undertaking in this Court within two weeks from today.

7. Hence I pass the following order :

i) Second Appeal is dismissed with no order as to costs.

ii) Notwithstanding the dismissal of the Appeal, decree for possession shall not be executed till 28th February 2006 subject to the Appellant filing usual undertaking in this Court within two weeks from today. If undertaking is not filed within stipulated period, decree will become executable forthwith.

iii) Parties to act upon an authenticated copy of this order.

JUDGE.